

SENATE FINANCE COMMITTEE

March 29, 2021

1:01 p.m.

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CALL TO ORDER

Co-Chair Bishop called the Senate Finance Committee meeting to order at 1:01 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

Senator Donny Olson
Senator Natasha von Imhof

ALSO PRESENT

Suzanne Cunningham, Legislative Liaison, Department of Health and Social Services.

PRESENT VIA TELECONFERENCE

Albert Wall, Deputy Commissioner, Department of Health and Social Services; Dr. Anne Zink, Chief Medical Officer, Department of Health and Social Services; Dr. Joe McLaughlin, Chief Epidemiologist, Department of Health and Social Services; Sara Chambers, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development; Stacie Kraly, Chief Assistant Attorney General, Department of Law; Heidi Teshner, Director, Finance and Support Services, Department of Education and Early Development; Adam Crum, Commissioner, Department of Health and Social Services.

SUMMARY

SB 56 EXTENDING COVID 19 DISASTER EMERGENCY

SB 56 was HEARD and HELD in committee for further consideration.

CSHB 76 (FIN) am

EXTENDING COVID 19 DISASTER EMERGENCY

CSHB 76 (FIN) am was HEARD and HELD in committee for further consideration.

#sb56

#hb76

SENATE BILL NO. 56

"An Act extending the January 15, 2021, governor's declaration of a public health disaster emergency in response to the novel coronavirus disease (COVID-19) pandemic; providing for a financing plan; making temporary changes to state law in response to the COVID-19 outbreak in the following areas: occupational and professional licensing, practice, and billing; telehealth; fingerprinting requirements for health care providers; charitable gaming and online ticket sales; access to federal stabilization funds; wills; unfair or deceptive trade practices; and meetings of shareholders; and providing for an effective date."

CS FOR HOUSE BILL NO. 76 (FIN) am

"An Act extending the January 15, 2021, governor's declaration of a public health disaster emergency in response to the novel coronavirus disease (COVID-19) pandemic; approving and ratifying declarations of a public health disaster emergency; providing for a financing plan; making temporary changes to state law in response to the COVID-19 outbreak in the following areas: occupational and professional licensing, practice, and billing; telehealth; fingerprinting requirements for health care providers; charitable gaming and online ticket sales; access to federal stabilization funds; wills; unfair or deceptive trade practices; meetings of shareholders; and school operating funds; relating to informed consent for COVID-19 vaccines; relating to personal objections to the administration of COVID-19 vaccines; providing immunity from liability and disciplinary action for occupational licensees for exposure of clients to

COVID-19; providing immunity from liability for persons engaging in business and their employees for exposure of customers to COVID-19; and providing for an effective date."

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Co-Chair Bishop relayed that HB 76 was a companion bill for SB 56, and the bills would be considered together. It was the first hearing for HB 76. His intention was to hear and hold HB 76 and SB 56. He mentioned the names of invited testimony and individuals available for questions.

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SUZANNE CUNNINGHAM, LEGISLATIVE LIAISON, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, discussed a Sectional Analysis of version W.A of the bill (copy on file):

Section 1: Findings

Establishes legislative findings pertaining to COVID-19. The Legislature finds that it is in the best interest of the state to take appropriate steps to continue to contain the spread of COVID-19; to distribute COVID-19 vaccines statewide; and to take appropriate steps to limit further harm to the state's economy, enable displaced workers in the state to return to work, and to allow students to rejoin in-person classes.

Ms. Cunningham continued to address the Sectional Analysis:

Section 2: Approval, Ratification, and Extension of Disaster Emergency

Approves and ratifies the declarations of a public health disaster emergency issued on November 15, 2020, December 15, 2020, and January 15, 2021. Extends the Public Health Disaster Emergency issued on January 15, 2021 to September 30, 2021. Provides that the Commissioner of the Department of Health & Social Services (DHSS) may certify to the Governor that there is no longer a present outbreak of COVID-19, or a credible threat of an imminent outbreak. Upon receiving this certification, the Governor shall submit a proclamation to the Legislature that indicates that the public health disaster emergency no longer exists.

Co-Chair Bishop relayed that the committee had learned the previous week that the emergency allotment Supplemental Nutrition Assistance Program (SNAP) funding was authorized by the federal government until December 21, 2021. He queried if the state would be eligible for emergency allotment SNAP benefits for October, November, and December if the state kept the extension date of September 30, 2021, as proposed in HB 76.

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ALBERT WALL, DEPUTY COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), explained that the emergency declaration had to be in place in the month in which the emergency allotment SNAP benefits were paid. The benefits were applied for on a month-to-month basis.

Co-Chair Stedman asked for clarity regarding when the federal disaster declaration ended.

Co-Chair Bishop thought Co-Chair Stedman was referencing Section 2.

Ms. Cunningham informed that the federal public health emergency had to be renewed every 30 days, and the last renewal was January 19, 2021. She continued that the Biden Administration had indicated it intended to continue the federal public health emergency through the duration of calendar year 2021. The Major Disaster Declaration, in place via the United States Stafford Act, would remain in place until it was withdrawn.

Co-Chair Bishop asked what would cause a state or federal agency to determine that there was no longer a present outbreak of the COVID-19 disease, or a credible threat of a COVID-19 outbreak. He asked if the state had met the threshold already.

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DR. ANNE ZINK, CHIEF MEDICAL OFFICER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), relayed that her job, and that of the state's epidemiologist, was to promote the health and wellbeing of Alaskans. She thought the state's epidemiologist could best answer Co-Chair Bishop's question.

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Co-Chair Bishop repeated his question. He asked what would cause a federal or state agency to determine there was no longer a present outbreak of COVID-19 or an imminent outbreak, and if the state had met the threshold.

Dr. Zink stated that there were different definitions of outbreak or pandemic. She explained that the disaster declaration was more of a statutory condition rather than being a public health definition and was a tool for having additional resources.

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DR. JOE MCLAUGHLIN, CHIEF EPIDEMIOLOGIST, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), discussed basic definitions for terminology surrounding the emergency and disaster declarations. He explained that an epidemic referred to an increase in the number of cases of a particular disease above what was normally expected in a population. There were a number of diseases that were endemic in the population and had an established baseline rate. Once there was a sudden increase in the number of cases over time, it was possible to see epidemics emerge. An emerging unknown infection disease such as the COVID-19 virus would be considered to be an outbreak when there were three or more cases. An outbreak carried the same definition as an epidemic but was often used for a more limited geographic area and sometimes smaller numbers.

Dr. McLaughlin continued to address Co-Chair Bishop's question. He explained that a pandemic referenced an epidemic that was spread over several countries or continents, usually affecting a large number of people. A situation became a public health emergency when the health consequences of an outbreak had the potential to overwhelm routine community capabilities to address them.

Dr. McLaughlin discussed disasters, which were considered as sudden, large-scale events which were often chaotic because of acute onset. He used examples of earthquakes and

wildfires. The end result of a disaster typically involved significant physical, social, psychological, and environmental harm. He relayed that some states had only public health emergency declaration capacity, some only had disaster declaration capacity, and some had both.

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Senator Wielechowski thought the crux of the issue was that Section 2 of the bill indicated that if the commissioner of the Department of Health and Social Services certified to the governor that there was no longer a present outbreak of coronavirus or a credible threat of an imminent outbreak, the governor could end the disaster declaration. He wanted to see the issue depoliticized. He asked for an estimate of when there would no longer be a present outbreak or credible threat of an outbreak of the coronavirus.

Dr. McLaughlin answered, "not in the foreseeable future." He qualified that there was no way of knowing how long the pandemic would continue. He thought the outcome was dependent upon the rate of vaccination as well as emerging variants. He cited that there were 5 variants of COVID-19 reported by the Centers for Disease Control (CDC) that were of concern. He thought most of the variants appeared to be responding to vaccines but considered that there could be new variants that emerged and showed a great degree of resistance to vaccine-induced immunity. He summarized that presently there was no end in sight in the near future.

Senator Hoffman asked if there was a level of herd immunity (such as 80 percent) that would help mitigate the effect of variants. He had heard that once a person received the immunization, there would not be transmission of variants. He used the example of a community that had a 90 percent vaccination rate. He thought if there was a benchmark, there could be a realistic way to look at progress. He acknowledged the complexity of the question.

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Dr. McLaughlin did not know for sure what the herd immunity threshold was for the COVID-19 virus. He explained that many variants had become more transmissible because of genetic mutations that had occurred, which could make it difficult to determine an immunity threshold. He estimated

that the herd immunity threshold could be between 70 percent and 80 percent.

Dr. McLaughlin addressed the concept of herd immunity through an anecdotal group of 1,000 people. He postulated that once 80 percent of people were vaccinated, in the absence of any other mitigation activities, the virus' trajectory started to go down. He referenced the rapid acceleration phase, and then there had been a decline attributed to work done with non-pharmaceutical interventions such as masking, social distancing, and handwashing. With a high level of herd immunity, even without masking and herd immunity there would be a decline of the disease trajectory, to eventually reach a baseline. He hoped the state would see herd immunity level from vaccination reach the 70 to 80 percent range in the next couple of months, which would result in a low-level percolation of the virus.

Dr. McLaughlin addressed the question of how to know if the state's population was reaching herd immunity and argued that the best way was to assess vaccination rates. He noted the difficulty of assessing the level of immunity a person had through prior infection. He cited that the CDC said that if an individual had been infected with COVID-19, there was a robust immunity level for 90 days, after which re-exposure would require quarantine. He summarized that the durability of immunity from infection was not as strong and robust as the immunity a person incurred after vaccination.

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Dr. Zink added that it was possible to see a benefit even before reaching herd immunity and cited a decrease in hospitalizations. She mentioned the issue of hospitals becoming overwhelmed and emphasized the importance of vaccinations.

Senator Hoffman asked if the 70 to 80 percent herd immunity calculation included only those 16 and over that could receive the vaccine.

Dr. McLaughlin explained that from a public health perception the calculation included the entire population and the desired outcome was 70 to 80 percent immunity. He noted that the disease severity was the worst for older

adults. He mentioned that it was still possible for children to get severely ill from the virus. He hoped there would be a vaccine licensed for kids younger than 16 by the summer. He summarized that ultimately it was desirable to get 70 to 80 percent of the entire population.

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Senator Wilson was confused about some messaging he had heard in the past week. He thought he had heard that Dr. McLaughlin did not see an end to the outbreak and did not see an end to the threat; but had also thought the doctor had indicated that there would be a "flattening of the curve" in a couple of months. He recounted that couple of weeks previously, he had heard Dr. McLaughlin state in a call with the legislature that people with COVID-19 exposure could have more than a 90-day immunity and the CDC could be revising its statement. He thought he had been receiving mixed messages from the department. He commented that the administration was not willing to extend the emergency declaration without legislative action. He thought it was confusing for himself as well as the general public in understanding when the danger to the public might end and when the state could get back to "normal."

Dr. McLaughlin addressed the question about his prior answer about when we might see COVID-19 come to an end. He thought COVID-19 would be with the global population for years to come, and the virus would likely become a routinely circulating coronaviruses. He did not think the virus would go away for the foreseeable future.

Senator Wilson asked how long the department expected the current situation would continue to the degree that a disaster declaration was needed.

Dr. McLaughlin deferred the question to others.

Dr. Zink stated that the department did not believe all the authorities granted in the disaster declaration were not needed to address the pandemic, but considered that limited authority was needed to continually respond to the changing pandemic. She emphasized that the department would continue to work for the public health for Alaskans. She affirmed that COVID-19 was going to be present for a long time. She commented that the state had built up its resources and ability to respond to the pandemic, and the department no

longer had as much of a concern about overwhelming the healthcare infrastructure as a year ago.

Co-Chair Bishop asked if Senator Wilson was satisfied with the answer to his question.

Senator Wilson was satisfied.

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Ms. Cunningham continued to address the Sectional Analysis:

Section 3: Financing Plan

1. Appropriations made in Section 8 of HB 206 (Ch.2, SLA 2020)
2. Appropriations made in Section 10 of HB 234 (Ch. 7, SLA 2020)
3. Appropriations made in Section 28 of HB 205 (Ch. 8, SLA 2020) - of federal receipts received during FY 2021 for Medicaid Services and federal receipts received for responding to the public health disaster emergency
4. Appropriations made in Section 38 of HB 205 (Ch. 8, SLA 2020) to the Disaster Relief Fund
5. Appropriations made in Section 37(a) of HB 205 (Ch. 8, SLA 2020) - excess federal receipts received during FY 2021
6. The authorization for expenditure of federal CARES Act receipts that were ratified in HB 313 (Ch. 32, SLA 2020)
7. Federal receipts received by any state agency for purposes of mitigating the public health disaster emergency that may be requested to include in an appropriation bill if the Legislature is in session, or using the process under AS 26.23.020(k)(2) if the Legislature is not in session
8. Any future appropriations made for FY 2021 and FY 2022
9. The Governor may not spend more than \$10 million from the Disaster Relief Fund for the emergency declared on January 15, 2021 and extended to September 30, 2021

Senator Wielechowski asked about Section 3 (a) 6. He asked about excess federal receipts received and if there was any indication of how many funds would be generated for the governor to use.

Ms. Cunningham asked to consult with the Office of Management and Budget (OMB) and provide the information in writing.

Senator Wielechowski was curious about why the funds were not included in SB 241, the financing plan from the previous year.

Ms. Cunningham asked if Senator Wielechowski was referring to Item 6.

Senator Wielechowski answered "yes."

Ms. Cunningham affirmed that DHSS had received federal receipt authority in one of the appropriation bills, and offered to follow up in writing to clarify.

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Senator Wilson asked about Section 3 on page 5, line 18, which indicated the governor could not expend a cumulative amount greater than \$10 million. He noted the act expired February 15, 2020 and asked about the total amount the governor had spent during the month.

Ms. Cunningham offered to provide the information at a later time after consulting with OMB and the Department of Military and Veterans' Affairs. She noted the governor did not have the authority to extend the disaster declaration from January 15 to February 14. She agreed to verify the information in writing.

Senator Wilson assumed that the declaration was extended. He thought about the authority time frame and how the funds were expended. He mentioned the Disaster Relief Fund.

Ms. Cunningham noted that in Subsection (b) on page 5, lines 18-21, there was additional authority to spend from the Disaster Relief Fund rather than the original authority under SB 241 from the previous year.

Co-Chair Bishop asked if the \$10 million authorized on page 4, line 26 of the bill was in addition to the \$20 million in authorization.

Ms. Cunningham noted that page 4, line 26 signified the authority to transfer up to \$20 million between all appropriations made in DHSS and was separate from appropriations made to or expenditures from the Disaster Relief Fund, which was the subject of subsection (b) on page 5, lines 18-21 of the bill. She noted that there was \$10 million authorized for expenditure from the Disaster Relief Fund in SB 241.

Senator Wielechowski looked at Section 3 (a) 6 and thought the funds in the section were addressed through the Revised Program Legislative (RPL) process from the text of HB 205. He was curious about the interplay of HB 76 and HB 205. He asked if the state was still working under the RPL process.

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Co-Chair Bishop thought that Section 3 generated many questions from the committee. He thought that the committee would probably have the Legislative Finance Division to speak on the section. He thought some of the funds in question had already been encumbered.

Co-Chair Bishop asked to address Section 4.

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Ms. Cunningham continued to address the Sectional Analysis:

Section 4: Report to the Legislature

Requires the Office of Management and Budget to submit a monthly report to the Legislative Finance Division that lists the total expenditures incurred by the State in its response to the public health emergency disaster including expenditures aimed at mitigating, preventing, and controlling COVID-19.

The report will include cumulative expenses incurred since March 11, 2020, the date the Governor issued an initial declaration of a public health disaster emergency. This section further provides for a final report due to the Legislative Finance Division no later than November 30, 2021 or 60 days after the

Governor determines that a public health disaster emergency no longer exists, whichever is earlier.

Ms. Cunningham noted that OMB had been providing the reports mentioned, and the March report should be available shortly for members consideration.

Co-Chair Bishop thought Ms. Cunningham had stated that OMB had been adhering to reporting requirements even though the state had not been under a disaster declaration for some weeks.

Ms. Cunningham agreed.

Ms. Cunningham continued to address the Sectional Analysis:

Section 5: Professional and Occupational Licensing
Provides that a professional or occupational licensing board, or the Director of Corporations, Business and Professional Licensing (CBPL):

1. May not increase licensing fees during the public health disaster emergency declaration;
2. May grant a license, permit or certificate on an expedited basis, if an individual holds a corresponding license, permit, or certificate in good standing in another jurisdiction. A license expedited under this section, expires September 30, 2021 or on the date that the Governor determines a public health disaster emergency no longer exists;
3. May temporarily waive or modify continuing education requirements for licensees who need to renew a professional license permit or certificate in calendar year 2021;
4. May require an individual who receives a license, permit, or certificate under this section to arrange and agree to supervision by an individual who holds a license, permit or certificate in good standing for an applicable profession or by an administrator of facility licensed under AS 47.32.

This section provides that a licensed professional seeking or holding an expedited license, permit or certificate under this section who travels to Alaska from outside of Alaska, must comply with travel restriction orders or guidelines recommended by the Centers for Disease Control and Prevention (CDC), the

US Health and Human Services, and that are in effect when the individual travels.

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Co-Chair Bishop asked if Section 5 was still needed or if the department had found a way to accomplish the alternative licensing.

SARA CHAMBERS, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), reported that boards had worked hard in the previous year to try and move the regulatory tools forward. She stated that the division had made considerable headway since there had been time to adopt regulations to address some of the problems. The request in the bill went further than the tools proposed in the bill, and the division supported the governor's request.

Co-Chair Bishop asked how far along the division was with the regulation packages Ms. Chambers mentioned.

Ms. Chambers stated that for the boards that had elected to adopt regulations to establish emergency courtesy licenses, emergency regulations had been completed and were being adopted as permanent regulations. The division was issuing the licenses currently.

Ms. Cunningham continued to address the Sectional Analysis:

Section 6: Telehealth and Telemedicine

Allows for a health care provider licensed, permitted or certified in another jurisdiction to practice telehealth in Alaska, without first conducting an in-person physical examination or being licensed in Alaska. The telehealth services provided must be within a provider's authorized scope of practice. If the provider determines that the encounter will extend beyond the scope of practice or services, the provider must notify the patient and recommend that the patient contact a health care provider licensed in Alaska. The health care provider cannot charge unreasonable fees and the fees must be consistent with the ordinary fees charged for that service and may not be more than 5% above the ordinary fees typically charged.

Senator Wielechowski asked if Ms. Cunningham had sense of how many telehealth providers had taken advantage of the provision in Section 6.

Ms. Chambers stated that since the legislation bypassed licensing in the state, the department did not have any way to record or track people that were practicing under the provision. She did not have a way to estimate how many practitioners had taken advantage of the bill section.

Senator Wielechowski asked if the department had received any complaints about outside telehealth or telemedicine providers.

Ms. Chambers answered in the negative.

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Senator Wilson relayed that there was a similar bill moving through the Senate, and public testimony from providers had indicated there was concern about jurisdiction over and tracking of providers. He mentioned concerns about behavioral health and wondered if a definition was outlined in the bill.

Co-Chair Bishop asked if Senator Wilson had two questions.

Senator Wilson stated that one comment was a statement of concern about not knowing who was practicing medicine in the state. He asked if the bill covered other healthcare services such as behavioral health and dental health.

Ms. Chambers stated that the provision only applied to physicians, physician's assistants, and nurses. There was no provision for other healthcare providers to practice in the same way under the proposed or previous legislation. She stated that the department had been working with committees on addressing Senator Wilson's concerns on permanent policy. Since the proposal was for emergency policy only, there was less concern about proposing telemedicine for the next few months so people could receive care. The administration was willing to continue the practice in the near term but not for permanent policy change.

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Co-Chair Bishop asked about Ms. Chambers last statement. He had heard from constituents that people that were able to take advantage of accessing telemedicine under the disaster declaration were no longer able to do so. He thought Ms. Chambers mentioned continuing telemedicine.

Ms. Chambers affirmed that the bill would allow physicians and nurses that were not licensed in Alaska to continue to see Alaskans unable to travel for care. The bill had a deadline for the practice to end, at which time the administration hoped people would be able to travel, or there would be a new modified telemedicine policy in place. She reiterated that the department was working on the new policy with Senator Wilson and committees. She referenced a courtesy license as an option.

Senator Wilson thought behavioral health services were covered through telemedicine federally. He asked if the state needed to add anything to the disaster declaration to cover the need for behavioral health service in the state.

Ms. Chambers stated that the behavioral health boards had done a good job in adopting emergency licensing provisions in regulation. Her office had not heard in the previous few months that there was an outstanding need for providers not licensed in Alaska to be able to provide services. The department had been able to identify providers and point them toward emergency licensure. Presently, the data did not support the need to expand the provisions.

Senator Wilson was concerned about parity. He noted there was only allowance for medical telehealth but no other type of healthcare and thought many other providers were looking for the same equality.

Ms. Chambers had not heard that other providers were looking for the same accommodation. She thought it would be helpful for the division to have the information to bring the boards for consideration for regulation or permanent legislative policy change. She noted that the department was looking at the legislation as linked to an emergent situation with an end date, trying to avoid price gouging. She pondered that the addition of other providers could be a policy change to consider and supported facilitating a discussion with legislative offices and the boards.

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Ms. Cunningham continued to address the Sectional Analysis:

Section 7: Fingerprinting

Provides that the Department of Commerce, Community and Economic Development shall coordinate with DHSS and the Department of Public Safety to expedite the process for certain license applicants to submit fingerprints.

Co-Chair Bishop asked if the administration still felt that the provision in Section 7 was needed.

Ms. Cunningham deferred to Director Chambers.

Ms. Chambers believed that the department had met its need in Section 7 through working with the Department of Public Safety. She did not see an anticipated need unless there was an unanticipated spike that would shut down the ability to get fingerprints rolled in person. She had not heard from programs that required fingerprints that anyone was having trouble accessing the resource.

Senator Wielechowski asked to go back to Section 6 to discuss the fees. He asked if the wording referenced services as provided in Alaska, or services provided elsewhere outside the state. He noted that the state had the most expensive healthcare in the world, and he did not see how others should charge Alaska rates while charging out of state clients with lower rates.

Ms. Chambers stated that the division had not heard any complaints or concerns from individuals that had been charged an extraordinary amount. She thought Senator Wielechowski's question was a good question for the bill drafter. She had not contemplated the subject.

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Ms. Cunningham continued to discuss the Sectional Analysis:

Section 8: Meeting of Shareholders; Notice of Shareholder Meetings

Allows for meetings of shareholders, shareholders of Native corporations, and members of a nonprofit corporation, to be held by electronic communication,

in compliance with guidelines adopted by each of the type of entities board of directors.

Ms. Cunningham noted that SB 24 [allowing corporate shareholder meetings and nonprofit member meetings to be held via remote communications] had been transmitted to the governor after the Senate concurred with the changes made in the other body the previous week. The action of the governor would determine if Section 8 was necessary.

Senator Wilson asked about Section 6, and whether licensed advanced nurse practitioners could practice telehealth under the bill.

Ms. Cunningham specified that Section 6 pertained to the provisions of AS 08.64.170, the license to practice medicine, podiatry, or osteopathy; as well as AS 08.68.160, which pertained to registered advanced practice, registered, or practical nurses in the state.

Senator Wielechowski asked about Section 6 (c), which gave the commissioner the ability to waive any state laws or regulations.

Ms. Cunningham answered "yes," and thought the provision pertained to regulations that impacted Medicaid. She thought most of the authorities to waive regulations were provided for or allowed for under the public health emergency and sections of the Social Security Act that the Centers for Medicare & Medicaid Services (CMS) provided waivers for the delivery of services. She offered to provide a list of the specific regulations.

Co-Chair Bishop referenced Section 8 and asked if Ms. Cunningham was aware of any meetings that were held after February 15, 2021 and before the governor's plans to sign SB 24 that would require a retroactivity clause.

Ms. Cunningham deferred to Senator Wilson.

Senator Wilson noted that SB 24 had a retroactivity clause that covered the time period in question. The bill had been back dated to the last retroactivity of the last declaration to make sure there was no lapse of corporations and boards that met during the time period mentioned by Co-

Chair Bishop. He hoped the governor would sign the bill in the upcoming days.

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Ms. Cunningham continued to address the Sectional Analysis:

Section 9: Charitable Gaming Online Ticket Sales

Allows for certain charitable gaming activities to be conducted online during the public health disaster emergency declared by the Governor on January 15, 2021 and an extension granted by this Act. Permittees and operators may sell tickets and draw the winning ticket online for a raffle or lottery, dog mushers' contest, derby, or a type of classic. The seller must verify that the purchaser is of legal age to purchase, physically present in Alaska, and not within an area where charitable gaming is prohibited. The Department of Revenue is responsible for establishing standards for online ticket sales.

Section 10: Informed Consent for COVID-19 Vaccines

Provides that a health care provider may not administer a COVID-19 vaccine to an individual without first obtaining the informed consent of the individual, or the parent or guardian of a minor child.

Section 11: Personal Objections to the Administration of COVID-19 Vaccines

Provides that an individual may object to the administration of a COVID-19 vaccine based on religious, medical, or other grounds. A parent or guardian of a minor child may object to the administration of the COVID-19 vaccine to the minor child based on religious, medical, or other grounds. This section further provides that a person may not be required to provide justification or documentation to support an individual's decision to decline to receive the COVID-19 vaccine.

Senator Wilson asked if Section 11 were passed into law, if the provision would allow an employer to mandate that employees be vaccinated for COVID-19. He asked if businesses or other entities could require the general public to receive an emergency-authorized vaccine under grounds of termination or other exclusionary purposes.

Ms. Cunningham deferred the question to the chief attorney general.

Senator Wilson asked if Section 11 would prohibit "vaccine passports," or if more language was needed to prevent a business from mandating vaccination for COVID-19 for employees. He asked if businesses would be allowed to engage in exclusionary practices.

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STACIE KRALY, CHIEF ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), stated that the issue of a "vaccine passport" was being discussed more commonly in various circles relating to how the public could move forward to get back to normalcy. She explained that businesses and governmental agencies had the ability to provide restrictions or rules about how individuals accessed their services. She used the example of an airline being able to potentially say that a person needed a vaccine passport for purposes of travelling. She explained that "vaccine passport" was a more global phrase that contemplated the idea of having some sort of verification of being fully vaccinated in order to access services, enter business, or in some case have employment in a governmental agency. She thought the ability of a business or the government being able to limit an individual's access or to participate would have to be evaluated through a constitutional lens.

Ms. Kraly continued to address Senator Wilson's question. She mentioned the Americans With Disabilities Act and individuals that might not be able to receive a vaccine. She mentioned conscientious objection to the vaccine, and a religious exemption. She summarized that individuals could be prohibited from participating, and could have some means to be excluded from different services or processes; but she thought the question was about the standard of what was allowed. She thought the idea that everyone must be vaccinated to participate was overly broad. She discussed an accommodation such as masking. She did not think the provision precluded the idea of a vaccine passport and pondered the question of how such a passport would be applied. She thought further specific situational analysis would be needed.

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Senator Wilson asked if Ms. Kraly's answer included emergency use order vaccines. He thought Ms. Kraly indicated it would be necessary to include some type of anti-discriminatory language to prohibit the vaccine passport to be used in Alaska.

Ms. Kraly thought there should be language to indicate the use of the vaccine passports was to be non-discriminatory, but thought the concept was to some extent built into the state and federal constitutions.

Senator Wilson mentioned emergency use ordered vaccines.

Ms. Kraly noted that the government was currently operating under emergency use authorization for the COVID-19 vaccines currently available. The question of whether the emergency authorization for the use of the vaccination under a vaccine passport was an open question. She continued that ultimately the emergency use authorizations, because of the number of vaccines being used nationwide, provided data that supported the efficacy of the vaccines that would be available, and eventually there would be enough core data for a standard authorized vaccine. She summarized that the use of emergency-use authorized vaccines had some limiting factors with respect to vaccine passports, but ultimately the emergency use authorization framework would end as vaccine use increased and data showing vaccine efficacy was gathered.

Ms. Cunningham continued to address the Sectional Analysis:

Section 12: School Operating Funds

Provides that a school district may retain an unreserved portion of its year-end fund balance in its school operating fund and the unreserved portion may not be used to reduce the state aid for that school district in the next fiscal year. Under current law, a district may not accumulate an unreserved portion that is greater than 10 percent of its expenditures for that fiscal year.

Ms. Cunningham noted that Section 12 was an amendment offered in the House Finance Committee. She noted that the director of school finance was available to answer questions.

Co-Chair Bishop noted that the current version of the bill contemplated a repeal date of June 30, 2023. He asked if Ms. Teshner thought the date was appropriate.

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HEIDI TESHNER, DIRECTOR, FINANCE AND SUPPORT SERVICES, DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT (via teleconference), believed the date was reasonable given the amount of COVID-19 relief funds that school districts were receiving, and it was reasonable to allow a couple of years of flexibility for using state funds.

Senator Wilson asked about fund balances and maintenance of effort.

Ms. Teshner explained that the maintenance of effort was calculated on the year the state paid out. The provision in the bill would have no effect on the maintenance of effort calculation. The proportional amount the state would pay to districts was separate from the provision.

Ms. Cunningham continued to address the Sectional Analysis:

Section 13: Licensee Liability for Client Exposure to COVID-19

Adds a new section of law to AS 08.02 (Business and Professions) that provides that a licensee under Title 8, is immune from disciplinary actions for the sickness, death, economic loss, and other damages suffered by a client due to exposure to COVID-19 if the exposure occurred during the course of the licensee's practice.

In order for the protection to apply, the licensee must have been in substantial compliance with applicable federal, state, and municipal laws and health mandates in effect at the time of the client's exposure. The immunity from disciplinary action does not apply if the exposure of the client resulted from gross negligence, recklessness, or intentional misconduct of the licensee.

Section 14: Business and Employee Liability for Customer Exposure to COVID-19

Adds a new section of law to AS 45.45 (Trade and Commerce) that provides that a business owner and an employee, while working in the business, are immune from liability for sickness, death, economic loss, and other damages suffered by a customer from exposure to COVID-19 while the individual is patronizing the business.

In order for the protection to apply, the business owner must have been in substantial compliance with applicable federal, state, and municipal laws and health mandates that are in effect at the time the customer was exposed to COVID-19. Immunity does not apply to exposure to COVID-19 if the exposure was the result of gross negligence, recklessness, or intentional misconduct of the business owner or the employee of the business.

Ms. Cunningham noted that Section 13 and Section 14 had a different retroactivity clause than that of the bill and would make the sections retroactive to exposure occurring on or after February 14, 2021.

[2:19:28 PM](#)

Ms. Cunningham noted that Section 15 had been an amendment that was offered on the House floor when the bill was in second reading before the body. She continued to address the Sectional Analysis:

Section 15: Use of CARES, CRSSA, or American Rescue Plan Act Funds

Provides that no funds received by the State under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Coronavirus Response and Relief Supplemental Appropriations Act (CRSSA), or the American Rescue Act may be expended for an abortion that is not mandatory under AS 47.07.030(a).

Provides that funds may only be expended for mandatory services under Title XIX of the Social Security Act and for optional services offered by the Alaska State Medicaid Plan that has been approved the US Department of Health and Human Services.

Co-Chair Bishop asked if there had been any COVID-19 state or federal funds used for abortions in the state to date.

Ms. Cunningham had inquired about the question earlier and had not received a response from the department. She offered to provide the information in writing at a later date.

Ms. Cunningham continued to address the Sectional Analysis:

Section 16: Amends Section 37, Chapter 10, SLA 2020
Repeals Section 29 (Purchase of Seafood for Distribution) of SB 241 effective March 11, 2021.
Repeals Section 31 (Tolling of Office of Administrative Hearings) of SB 241 effective March 11, 2021.
SB 241 provided a sunset date for these sections of March 11, 2021.

Ms. Cunningham continued to address the Sectional Analysis:

Section 17: Repeals sections of SB 241
Repeals Section 25 (Witnessing of Will Signing by Videoconference), Section 26 (Unfair or Deceptive Trade Practices), and Section 28 (State Access to Federal Education Stabilization Funds) of SB 241 on September 30, 2021. SB 241 provided a sunset date for these sections of March 11, 2021.

Section 18: Applicability Section
Provides that Section 13 (Licensee Liability Immunity) and Section 14 (Business/Employee Liability Immunity) apply to events of exposure to COVID-19 occurring on or after February 15, 2021.

Section 19: Repeal Section
Sections 1 - 3 and Sections 5-11 are repealed on the earlier of September 30, 2021 or when the Governor determines a public health disaster emergency no longer exists.
Section 12 (School Operating Funds) is repealed on June 30, 2023.

Section 20: Retroactivity
Except for Section 2(a), the sections of this bill are retroactive to February 14, 2021, if this Act takes effect after February 14, 2021.
Section 2(a) is retroactive to November 15, 2020.

Section 21: Effective Date

This Act takes effect immediately under AS 01.10.070(c).

2:23:10 PM

Co-Chair Stedman asked to go back to Section 19. He wanted more clarity regarding the different federal and state dates. He wondered if the legislature would have to return in the fall to take action.

Ms. Cunningham relayed that when the bill was originally introduced in January, the date of September 30, 2021, was chosen as the end of the federal fiscal year. At the time of introduction, the Biden Administration had not extended the federal public health emergency. Rather than having a definitive answer, the end of the fiscal year had been chosen as the date.

Co-Chair Stedman asked if there should be consideration towards making the dates match up.

Ms. Cunningham stated that the administration was happy to discuss the end date of any type of authority related to the COVID-19 response.

Ms. Cunningham noted that Section 21 was an immediate effective date clause.

Co-Chair Bishop conveyed that there was an amendment deadline of April 1, 2021, at 5 o'clock p.m. He discussed the agenda for the following day.

Senator Hoffman noted that HB 76 was much broader than the previous bill that was considered. He asked if the administration supported the broader bill.

Ms. Cunningham reiterated that the testimony of the DHSS commissioner indicated that there had been certain authorities that had been identified as important elements to continued response to COVID-19 in the state, and the administration supported a limited approach in providing the authorities. The authorities were all-encompassing under a disaster declaration.

2:27:02 PM

Senator Hoffman reminded that Commissioner Crum's comments were made prior to the House taking action in the form of HB 76. He asked if the administration had taken a different position in light of the fact that the House had taken action. He thought it seemed as though the issues the commissioner addressed could be implemented under the House version of the bill, but not necessarily utilizing all the provisions of the bill. He asked if the administration felt that it could accomplish what it wanted the way the bill was currently written.

ADAM CRUM, COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), addressed Senator Hoffman's question. He thought the topic needed to be considered in conversation with the governor and legislative leadership and wanted to get back to Senator Hoffman with a response at a later time.

[2:29:33 PM](#)

Co-Chair Stedman asked how many states had emergency declarations in place, and how many did not. He wondered if the states without a disaster declaration in place had a similar structure as Alaska. He asked about timelines for expiration amongst the states that had declarations in place.

Commissioner Crum relayed that he had an outstanding inquiry with the National Governor's Association about the current status across the nation. He cited that the governor for the State of Michigan had lost the ability to make a disaster declaration, but another state official had the statutory authority to declare a public health emergency. Most of the other states in the country had a mechanism of one or both of a disaster declaration or public health emergency in order to address federal flexibilities. He offered to provide the information when it became available.

Co-Chair Stedman understood that all states had the ability to make a disaster declaration and thought Alaska would be an anomaly without one. He hoped to get more information within the next 48 hours as the committee worked on the bill.

Co-Chair Bishop concurred with Co-Chair Stedman.

SB 56 was HEARD and HELD in committee for further consideration.

HB 76 was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

2:32:27 PM

The meeting was adjourned at 2:32 p.m.